

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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CARPENTERS HEALTH AND)	CASE NO. C12-1252RSM
SECURITY TRUST OF WESTERN)	
WASHINGTON, <i>et al.</i> ,)	
)	ORDER GRANTING DEFENDANTS'
Plaintiffs,)	MOTION TO DISMISS INDIVIDUAL
)	DEFENDANTS
v.)	
)	
PARAMOUNT SCAFFOLD, INC., <i>et al.</i> ,)	
)	
Defendants.)	
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I. INTRODUCTION

This matter comes before the Court on the Individually-Named Defendant's Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(2). (Dkt. #75). Defendants Daniel Johnson and James Johnson argue that this Court lacks personal jurisdiction over them, either general or specific, because their contacts with Washington do not approximate physical presence in this State, they have not purposefully directed activity to the State of Washington and the exercise of jurisdiction would be unreasonable. Plaintiffs oppose the motion, arguing that Defendants have sufficient contact with this State such that the exercise of jurisdiction is proper and reasonable. For the reasons set forth below, this Court disagrees with Plaintiffs, and GRANTS Defendants' motion to dismiss.

II. BACKGROUND

This matter arises from Defendants' alleged failure to pay certain funds withheld from paychecks into required trust funds. Dkt. #64 at ¶¶ 4.1-4.12. Defendant Paramount Scaffold Inc. is a now defunct entity, it having filed for Chapter 11 bankruptcy and sold all assets to Defendant California Access Scaffold, Inc. *Id.* at ¶ 3.27 and Dkt. #75 at ¶ 3.18. With respect to the individual Defendants, Plaintiffs allege that while Paramount Scaffold was still operating, Daniel Johnson was a principal owner of the company and acted in the capacity of President, Secretary and Chairman. Dkt. #64 at ¶ 3.28. They further allege that James Johnson was also a principal owner of Paramount, and acted in the capacity of Vice President and Treasurer. Dkt. #64 at ¶ 3.29. Plaintiffs assert that while acting in their official capacities at Paramount, the Johnsons withdrew funds from employee paychecks that were to be paid to the Plaintiff Trust Funds on a monthly basis, but did not tender those funds to the Trusts, and instead used and converted the funds for other purposes. Dkt. #64 at ¶ 3.32.

III. DISCUSSION

A. Standard of Review on 12(b)(2) Motion

Federal Rule of Civil Procedure 12(b)(2) governs the dismissal of an action based on lack of personal jurisdiction. Where a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). A plaintiff cannot simply rest on the bare allegations of his Complaint, but rather is obligated to come forward with facts, by affidavit or otherwise, supporting personal jurisdiction. *Amba Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Where, as here, the motion is based on written materials rather than an evidentiary hearing, the plaintiff

1 needs only make a *prima facie* showing of jurisdictional facts. *Schwarzenegger*, at 800.
2 Uncontroverted factual allegations must be taken as true. Conflicts between parties over
3 statements contained in affidavits must be resolved in the plaintiff's favor. *Id.* A *prima facie*
4 showing means that the plaintiff has produced admissible evidence, which if believed, is
5 sufficient to establish the existence of personal jurisdiction. *Ballard v. Savage*, 65 F.3d 1495,
6 1498 (9th Cir. 1995).

8 **B. Personal Jurisdiction**

9 Where no applicable federal statute addresses the issue, a court's personal jurisdiction
10 analysis begins with the "long-arm" statute of the state in which the court sits. *Glencore Grain*
11 *Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002).
12 Washington's long-arm statute extends the court's personal jurisdiction to the broadest reach
13 that the United States Constitution permits. *Byron Nelson Co. v. Orchard Management Corp.*
14 95 Wn.App. 462, 465, 975 P.2d 555 (1999). Because Washington's long-arm jurisdictional
15 statute is coextensive with federal due process requirements, the jurisdictional analysis under
16 state law and federal due process are the same. *Schwarzenegger*, at 800-01.

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19 The Due Process Clause protects a defendant's liberty interest in not being subject to
20 the binding judgments of a forum with which it has established no meaningful contacts, ties or
21 relations. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 85 L. Ed.
22 2d 528 (1985). In determining whether a defendant had minimum contacts with the forum state
23 such that the exercise of jurisdiction over the defendant would not offend the Due Process
24 Clause, courts focus on the relationship among the defendant, the forum, and the litigation.
25 *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977).
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1 Personal jurisdiction exists in two forms, general and specific. *Dole Food Co. v. Watts*,
2 303 F.3d 1104, 1111 (9th Cir.2002). General jurisdiction exists over a non-resident defendant
3 when there is “continuous and systematic general business contacts that approximate physical
4 presence in the forum state.” *Schwarzenegger*, at 801. In the absence of general jurisdiction,
5 the court may still exercise specific jurisdiction over a non-resident defendant. To establish
6 specific jurisdiction, the plaintiff must show that: (1) defendant purposefully availed itself of
7 the privilege of conducting activities in Washington, thereby invoking the benefits and
8 protections of its laws; (2) plaintiff’s claims arise out of defendant’s Washington-related
9 activities; and (3) the exercise of jurisdiction would be reasonable. *Easter v. American West*
10 *Financial*, 381 F.3d 948, 960-61 (9th Cir. 2004); *Bancroft & Masters, Inc. v. Augusta Nat’l*
11 *Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

14 Personal jurisdiction over officers of a corporation in their individual capacities must be
15 based on their personal contacts with the forum state and not on the acts and contacts carried
16 out solely in a corporate capacity. Each defendant’s contacts with the forum state must be
17 assessed individually. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781, 104 S. Ct. 1473,
18 79 L. Ed. 2d 790 nt.3 (1984); *Calder v. Jones*, 465 U.S. 783, 790, 104 S. Ct. 1482, 79 L. Ed. 2d
19 804 (1984). A corporate officer who has contact with a forum only with regard to the
20 performance of his official duties is not subject to personal jurisdiction in that forum. *Kransco*
21 *Manufacturing, Inc. v. Markwitz*, 656 F.2d 1376, 1379 (9th Cir. 1981); *Forsythe v. Overmyer*,
22 576 F.2d 779, 782 (9th Cir. 1978). Further, a person generally acting as an agent on behalf of a
23 corporation is not individually subject to personal jurisdiction merely based on his actions in a
24 corporate capacity. *TJS Brokerage & Co. v. Mahoney*, 940 F.Supp. 784, 788-89 (E.D. Pa.
25 1996); *Ali v. District of Columbia*, 278 F.3d 1, 7, 349 U.S. App. D.C. 327 (D.C. Cir. 2002).

Each defendant's contacts with the forum state must, therefore, be evaluated individually. *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980). Accordingly, Plaintiffs cannot simply impute the contacts of the corporate entity Paramount to the Johnsons for the purpose of establishing personal jurisdiction over them.

1. General Jurisdiction

The threshold for satisfying the requirements for general jurisdiction is substantially greater than that for specific jurisdiction. The contacts with the forum state must be of a sort that "approximate physical presence." *Bancroft & Masters, Inc.*, 223 F.3d at 1086. Defendants have asserted, and Plaintiffs have not disputed, that the individual Defendants' contacts with the State of Washington do not approximate those necessary to confer general jurisdiction. Dkt. #75 at 8 and Dkt. #79. Thus, general jurisdiction is not at issue here. Accordingly, the Court must examine whether there is specific jurisdiction over the Johnsons.

2. Specific Jurisdiction

In establishing specific jurisdiction, the burden is on the plaintiff to establish the first two prongs – availment of and nexus to activity in the forum state. Then, only if plaintiff has established the first two prongs, defendant can explain how the exercise of jurisdiction is unreasonable. *Schwarzenegger*, 374 F.3d at 802.

a. Availment

The Ninth Circuit employs different specific jurisdiction tests for the availment prong depending on whether the action sounds in contract or tort. *Ziegler v. Indian River County*, 64 F.3d 470, 473 (9th Cir. 1995). Courts will apply the "effects test," when the defendant's alleged acts are tortious in nature. *See Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998); *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1486 (9th Cir. 1993). In

1 order to establish purposeful availment under the “effects test” the plaintiff must demonstrate
2 the existence of (1) intentional actions (2) expressly aimed at the forum state (3) causing harm,
3 the brunt of which is suffered, and which the defendant knows is likely to be suffered, in the
4 forum state. *Panavision*, 141 F.3d at 1322; *Core-Vent Corp.*, 11 F.3d at 1486. A showing that
5 a defendant purposefully directed his conduct toward a forum state usually consists of evidence
6 of the defendant’s actions outside the forum state that are directed at the forum, such as the
7 distribution in the forum state of goods originating elsewhere. *Schwarzenegger*, 374 F.3d at
8 803.

10 In this case, the alleged conduct of the Johnsons sound in tort, as they have allegedly
11 engaged in the conversion/defalcation of employee trust funds; therefore, Plaintiffs must
12 establish purposeful availment under the “effects test.” However, rather than provide a factual
13 analysis for each of the Defendants, Plaintiffs argue that because officers of a corporation may
14 be personally liable or jointly liable with the corporation under Washington law, jurisdiction is
15 appropriate. Dkt. #79 at 5. Within that legal context they then proceed to discuss Daniel
16 Johnson’s alleged actions in his official capacity at Paramount. *Id.* at 5-6. Significantly, they
17 cite to know evidence in the record in support of those assertions. *Id.* In addition, there is no
18 discussion of James Johnson’s alleged actions at all. As noted above, Plaintiffs must establish
19 each individual defendant’s personal contacts with the forum state and may not simply reply on
20 the acts and contacts carried out solely in a corporate capacity. Plaintiffs have not done so
21 here. As a result, Plaintiffs have failed to satisfy the elements of the “effects test,” and
22 therefore fail to establish the availment prong of the personal jurisdiction analysis.
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1 1) Defendant's Motion to Dismiss (Dkt. #75) is GRANTED and the claims against
2 Daniel Johnson and James Johnson individually are dismissed for lack of personal
3 jurisdiction.

4 2) The CLERK shall terminate Daniel Johnson and James Johnson as Defendants to
5 this action.
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7 DATED this 12th day of September, 2014.

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10 RICARDO S. MARTINEZ
11 UNITED STATES DISTRICT JUDGE
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